

1995

State of Utah v. Gregory Lee Farrow : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS 50

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COURT OF APPEALS

STATE OF UTAH.

Plaintiff/Respondent,

vs.

GREGORY LEE FARROW,

Defendant/Appellant.

Case No. 950432-CA

* * * * *

APPEAL FROM THE FIFTH JUDICIAL DISTRICT COURT

OF BEAVER COUNTY, STATE OF UTAH

HONORABLE ROBERT T. BRAITHWAITE
DISTRICT JUDGE

* * * * *

APPELLANT'S REPLY BRIEF

* * * * *

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ARGUMENT CLASSIFICATION No. 2

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SUMMARY OF LEGAL ARGUMENT

POINT I

IN ORDER FOR EVIDENCE OBTAINED BY A SEARCH OF AN IMPOUNDED VEHICLE TO BE ADMISSIBLE AT THE TRIAL, THE IMPOUNDMENT OF THE VEHICLE MUST HAVE BEEN LAWFUL.

POINT II

THE IMPOUNDMENT OF DEFENDANT'S VEHICLE WAS ILLEGAL. Defendant's arrest had nothing to do with the vehicle, the vehicle presented no hazard to traffic or otherwise and was legally parked, and Defendant repeatedly requested that he make other disposition of the vehicle which eliminated any liability to the police.

POINT III

THE SEIZURE OF THE CONTROLLED SUBSTANCE WAS ILLEGAL BECAUSE IT RESULTED FROM AN INVENTORY SEARCH OF AN ILLEGALLY IMPOUNDED VEHICLE.

POINT IV

THE SEIZURE OF THE HANDGUN WAS ILLEGAL BECAUSE IT RESULTED FROM AN INVENTORY SEARCH OF AN ILLEGALLY IMPOUNDED VEHICLE.

LEGAL ARGUMENT

All references to the record, unless otherwise indicated, are to the record of the hearing on Defendant's Motion to Suppress.

POINT I

IN ORDER FOR EVIDENCE OBTAINED BY A SEARCH OF AN IMPOUNDED VEHICLE TO BE ADMISSIBLE AT THE TRIAL, THE IMPOUNDMENT OF THE VEHICLE MUST HAVE BEEN LAWFUL.

Both the defendant and the prosecutor appear to be in agreement on this point. The principle that the impoundment of the vehicle must have been lawful in order for the search to be reasonable is stated by the Supreme Court of Utah in the case of State vs. Hygh, 711 P.2d 264 at Page 268.

POINT II

THE IMPOUNDMENT OF DEFENDANT'S VEHICLE WAS ILLEGAL.

The prosecution sites in its Brief of Appellee various cases in which the impoundment was held to be lawful; however, the facts in those cases were materially different from the facts in the instant case, at the time of the defendant's arrest, he was in the possession of the vehicle involved, it was legally parked on Main Street in Beaver City and presenting no hazard to traffic or otherwise, R. 32 and the

defendant repeatedly requested and urged that he be permitted to have the possession of the vehicle taken by his parents or his assistant manager. R. 34, 38-39, 44-45. This case does not involve the question of whether or not the police had an obligation to offer an alternative to impoundment for the defendant repeatedly requested and urged the alternative but it was refused. R. 34,38-39, 44-45. It is to be noted that the defendant was arrested for domestic violence assault and the vehicle was not involved. R. 38.

The prosecution relies in its brief on the case of State vs. Sterger, 808 P.2d 122. In that case the defendant was operating a motor vehicle in a remote part of Garfield County. An accident occurred which left the vehicle damaged and partially blockading the highway. It had to be moved to avoid hazard to other traffic and the defendant and passengers had been taken to a hospital for medical attention and the defendant had no opportunity to attend to a different disposition of the vehicle.

The prosecution also relies in its brief on State vs. Johnson, 745 P.2d 452. In that case, the vehicle was blocking traffic and had to be removed. In that case, the defendant and the other occupants of the vehicle were under the influence of drugs and were not able to move or otherwise dispose of the vehicle.

The prosecution also relies on State vs. Rice, 717 P.2d 695. The facts in that case are largely similar to the instant case. The vehicle was legally parked in a parking lot with the doors locked and the defendant's parents lived

just four blocks away, but the police refused to permit the defendant to turn the car over to his parents and insisted on impounding and searching the vehicle. P. 696. The defendant was arrested for driving on suspended license and an impoundment and search of the car was held to have been unnecessary and unreasonable. As the defendant was suspected of being a drug dealer, the search was considered to be a pretext search and unlawful. P. 696.

POINT III

THE SEIZURE OF THE CONTROLLED SUBSTANCE WAS ILLEGAL BECAUSE IT RESULTED FROM AN INVENTORY SEARCH OF AN ILLEGALLY IMPOUNDED VEHICLE. The seizure of the controlled substance was illegal because it resulted from the search of the vehicle which had been unlawfully impounded. See Points I and II of this argument.

POINT IV

SEIZURE OF THE HANDGUN WAS ILLEGAL BECAUSE IT RESULTED FROM THE ILLEGAL IMPOUNDMENT OF THE VEHICLE. The seizure of the handgun was illegal because it resulted from the search of the vehicle which had been unlawfully impounded. See Points I and II of this argument.

CONCLUSION

This court should vacate and set aside the order of the District Court denying Defendant's Motion to Suppress and the Motion to Suppress should be granted. The defendant should be granted all additional relief that is requested in his Brief of Appellant.

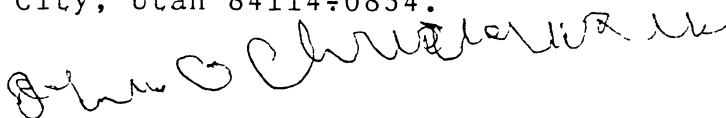
Dated March 27, 1996.



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PROOF OF SERVICE

I hereby certify that I served the foregoing Appellant's Reply Brief upon the Plaintiff/Respondent by mailing two copies thereof, postage prepaid, to the Attorney for the Plaintiff/Respondent on the 28th day of March, 1996, addressed as follows:
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